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IN THE

SUPREME COURT

OF THE

United States

October Term, A. D. 1954

JACK C. VAUGHAN, *Petitioner,* vs. BRANDON, BRANDON, HORNSBY & HANDY, and THE TEXAS COMPANY, *Respondents.*	No._____

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable, The Chief Justice and The Associate Justices of the Supreme Court of the United States:

The petition of Jack C. Vaughan, plaintiff and appellant below, and petitioner herein, respectfully shows:

I.

OPINIONS OF THE COURTS BELOW

A. The ORDER of the United States District Court for the Southern District of Mississippi of July 10, 1953, dismissing the claim of plaintiff, is to be found at pages 34 and 35 of the *Record*. It is not officially reported.

B. The OPINION of affirmance of the United States Court of Appeals for the Fifth Circuit of February 9th, 1954, is reported in 209 F. 2nd 954.

II.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOLVED

This case involves a question of importance which it is in the public interest to have decided by this Court of last resort. Petitioner asserts an invasion of his substantive right under the Federal Constitution to equality of treatment and deprivation of property without due process. The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and also has so far sanctioned such a departure by the lower Court as to call for an exercise of this Court's power of supervision.

A. The JUDGMENT of the United States Court of Appeals for the Fifth Circuit which petitioner seeks to have reviewed, was dated and entered on February 9th, 1954. (Tr. 54.)

B. The ORDER of said Court of Appeals denying petitioner's Petition For Rehearing was dated and entered on April 12th, 1954. (Tr. 62.)

C. The STATUTORY PROVISION believed to confer on this Court jurisdiction to review the judgment in question by writ of certiorari is *Section 1254(1), Title 28, U.S.C.A.*

III.

THE QUESTIONS PRESENTED FOR REVIEW

A. May a Circuit Court of Appeals, unable to sustain the judgment of the District Court on the grounds assigned by the District Court, affirm upon other grounds not even raised in the lower Court?

B. May the defense of "absolute privilege" be raised in the Court of Appeals for the first time; especially where its effect is to adjudicate a question of fact? Petitioner maintains that had the complaint's allegation of malice been denied by respondents; petitioner would have been entitled to have that fact passed on by jury—demand for jury trial having been made.

IV.

THE CONSTITUTIONAL PROVISIONS AND STATUTES WHICH THE CASE INVOLVES

A. The Fifth Amendment to the Constitution of the United States, *U.S.C.A. "Amendments 1 to 13"* page 102:

> "No person shall . . . be deprived of . . . property, without due process of law. . . ."

B. The Fourteenth Amendment to the Constitution of the United States, *U.S.C.A. "Amendments 14 to End"* page 12:

> "No State shall deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

C. The Ninth Amendment to the Constitution of the United States, *U.S.C.A. "Amendments 1 to 13"* page 414:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

D. Rules 7(a), 8(c) (d), 12(b), 38 and 56 (a) (c) and (e) of the Federal Rules of Civil Procedure, Title 28 U.S.C.A. (See Appendix.)

D. Sections 732, 744, 1604 Mississippi Code 1942 Annotated (See Appendix).

V.

STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED.

A. *Basis for Federal Jurisdiction in the Court of first instance:* The complaint was filed by plaintiff below, petitioner here, in the United States District Court for the Southern District of Mississippi, Western Division, on June 12th, 1953 (Tr. 1). The grounds upon which the jurisdiction of the Court was invoked was diversity of citizenship and the matter in controversy exceeded Three Thousand Dollars (Tr. 2). As alleged in the complaint, petitioner was a citizen of Louisiana; the respondents (defendants below), Brandon, Brandon, Hornsby & Handy were citizens of Mississippi; and the respondent The Texas Company, a Delaware corporation, whose designated agent for service of process in Mississippi was, W. H. Watkins, of Jackson, Mississippi (R. 1-2). All respondents were served with the complaint and summons (Tr. 10). No issue as to jurisdictional defects were raised by respondents.

B. *Statement Of The Facts:*

This is a case of slander in which the petitioner, Vaughan, seeks recovery of damages of $98,528.43 together with his costs (Tr. 8). The complaint alleges that the respondents made the false, malicious and slanderous remarks that petitioner had "taken bankruptcy", imputing the desire on petitioner's part to

"get out of" or otherwise avoid paying his legal and moral obligations (Tr. 2-3). That the slanders were maliciously calculated to injure the financial standing and reputation of petitioner (R. 4). That as the result, petitioner's credit was irreparably ruined, his financial plans and operations embarrassed; and he was at length compelled to leave Mississippi, take up residence in another State, and there attempt to start his life anew (Tr. 5). That the slanders were utterly false in that at no time in his life had petitioner ever taken bankruptcy or sought to take bankruptcy (R. 4). Petitioner demanded jury trial (R. 5).

The complaint further alleged that, in accordance with Mississippi law requiring institution of actions for libel and slander within one year, (Appendix I) this same cause of action was filed in the County Court of Adams County, Mississippi, on June 7, 1952 as a cross-complaint in a suit involving petitioner and respondents (R. 3). That on June 19th, 1952, the cross-complaint was abated without prejudice to bring a new action (R. 3) in a proper forum (R. 29). That this action was now brought in the stead of the cross-complaint and duly commenced within the time permitted by Section 744, Mississippi Code 1942, Annotated, Appendix II, which states in part:—"If in any action, duly commenced within the time allowed . . . the action (shall be) . . . avoided for any matter of form . . . the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original

suit . . . " (R. 4). The Cross-Complaint (R. 6) and the Order of the County Court of June 19, 1952 abating it (R. 9) were attached as exhibits to the complaint.

Respondents, defendants below, filed motion to dismiss on grounds that the complaint failed to state a claim upon which relief could be granted, and for the reason that his claim was barred by the Mississippi one year statute of limitations (Tr. 11). None of the other allegations of the complaint were denied.

On July 7th, 1953, petitioner served motion for summary judgment supported by affidavit which stated in part that one of the respondents, acting within the scope of his authority in behalf of all of the respondents

(6)

" . . . arose at the sounding of the said County Court's Docket . . . and giving as an excuse for wishing the case passed to the next term, said to that Court that he wished the case passed as the defendant, Jack C. Vaughan, had "taken bankruptcy"—thereby falsely, and publicly, and plaintiff verily believes maliciously, imputing a desire on plaintiff's part to get out of, or otherwise avoid paying his legal and moral obligations" (Tr. 24).

(7)

"The statement was false, and was known to be false by the defendants. . . ." (NOTE: Less than three months before, plaintiff had provided respondent, The Texas Company, with a financial statement showing assets of $131,414.83 plus, and

liabilities of $98,572.02. Par. 11 of the complaint. Tr. 4). "Deponent will never forget, he believes, the smirk with which the statement was made, nor the knowing look to other members of the Bar and spectators present."

(8)

"Apparently unknown to the aforesaid (member of the respondents) . . ., the plaintiff was among those court spectators. Deponent immediately arose (and) denied the false slander . . . " (Tr. 24-25).

(12)

"Plaintiff, deponent herein, shows that the aforesaid false slander was maliciously calculated to injure the financial standing and reputation of of plaintiff . . . at no time in his life has plaintiff ever 'taken bankruptcy' or sought to take bankruptcy (R. 25)."

(13)

"Deponent shows that he is at present falsely, though generally, reputed to have taken bankruptcy. And no amount of words, or apologies, or deeds will ever erase that impression from the minds of all who have done business with him in the past. Deponent is now unable to obtain any credit whatever; when prior to the slanderous campaign waged against him, his credit line at one bank alone was well in excess of $30,000.00. He has been subjected to the ignominy of a wave of lawsuits for debt, and the attachment of his lands and farming equipment and means of productivity

and his livelihood. He has been forced into separation from his wife and his children. He has been driven by the calumnies into another state, there to seek rehabilitation (Tr. 26)."

The two following communications were also placed in the record, the first, a letter from petitioner to respondents dated February 25th, 1953, to-wit:

P. O. Box 1373
New Orleans 10, Louisiana
25th February, 1953

REGISTERED MAIL
Messrs. Brandon, Brandon, Hornsby & Handy,
Attorneys-at-Law
Natchez, Mississippi

Dear Sirs:

"During the course of my 1950-52 litigation in the courts of Arkansas with, I believe, an ex-lawyer client of your firm; my name became the subject of attack by certain members of the legal profession. It was only natural that public notice would be taken of these smears, and many people would accept them as the truth.

"Of course, that might be helpful to those persons in Arkansas seeking to wrest certain lands from me.

"There is no doubt in my mind as to where all these slanders originated. Heretofore, my hands have been full of other litigation. But now, with the time and the means at hand, it is my intention to deal with you in the restoration of my good

name and my previous business and financial standing.

"As you are well aware, on or about January 14th, 1952, and at various times theretofore, as I am told, a member of your law firm, acting within the scope of his authority, publicly made the slanderous remark that I had taken "bankruptcy"—imputing a desire on my part to "get out" of, or avoid paying my legal and moral obligations.

"The statement was false, was known to be false by the member of your firm that made it; and the manner in which it was uttered, and the purpose for which it was uttered, could entertain no doubt as to malice.

"On June 7th, 1952, I took notice of this slander by filing a Cross-Complaint in the same Court in which the slander occurred—the case of The Texas Company vs. Jack C. Vaughan, No. 25, in the County Court of Adams County, Mississippi. On my motion, on June 19th, this Cross-Complaint was withdrawn by me without prejudice to bring a new action in a proper forum.

"I much prefer to settle this matter without litigation; but if by March 1st, 1953, it appears that a settlement is not possible, I intend to forthwith file suit in the District Court of the United States, Southern District of Mississippi, against you and The Texas Company for the amount set forth in my Cross-Complaint of June 7th, 1952.

Very truly yours,

s/ JACK C. VAUGHAN

CC. The Texas Company Jack C. Vaughan"

The second communication, a letter from respondents to petitioner, dated February 27, 1953, was placed in the record (R. 29-30), to-wit (pertinent portions):—

"Dear Sir:

"We are in receipt of your letter of February 25, 1953.

"You are hereby advised that no member of this firm has ever at any time remarked that you had taken bankruptcy and no such remark has been made by any member of this firm slanderously or otherwise . . ."

Very truly yours,
BRANDON, BRANDON,
HORNSBY & HANDY
s/ H. G. BRANDON
G. H. Brandon

GHB:bgb
cc.: The Texas Company

Asserting that there was no genuine issue as to any material fact, and that plaintiff was entitled to summary judgment as a matter of law (R. 23), petitioner moved for summary judgment under the provisions of Rule 56(a) of the Federal Rules of Civil Procedure (R. 30).

Nothing contained in petitioner's affidavit was denied by respondents; and no opposing or counter-affidavits were offered disproving it; and no testimony offered in contradiction of the facts set forth in plaintiff's (petitioner's) affidavit.

On July 10, 1953, the District Court awarded summary judgment to respondents (who had not moved for it); and held that the petitioner's claim was barred by the one year statute of limitations in Mississippi (R. 34) and that the bar of the Statute of Limitations "has not been saved by virtue of Section 744 of the Mississippi Code of 1942, Annotated. . . ." (R. 35). Notice of Appeal was filed on August 4th, 1953 (R. 36).

On February 9, 1954, The United States Court of Appeals for the Fifth Circuit, instead of sustaining the district court's judgment upon the same grounds as the district court—that the claim of the petitioner was barred by the statute of limitations—rendered the following Opinion:—

> "The judgment appealed from is affirmed upon authority of *Taliaferro v. Sims,* 5 Cir., 187 F. 2d 6, and *Gunter v. Reeves,* 21 So. 2d 468." (Tr. 53).

which cases had been decided in favor of the defendants on grounds that while the language complained of was admittedly slanderous; the plaintiffs were absolved because the remarks were "absolutely privileged".

The only question submitted by petitioner for this Court's consideration has to do with the question of the defense of *absolute privilege,* which was raised, for the first time, in the Court of Appeals, and which was strenuously objected to in that Court and in petitioner's "Petition For Rehearing" (Tr. 56, 59-60).

Petitioner assumed that the Court of Appeals considered the grounds upon which the District Court based its Order of July 10, 1953, erroneous and therefore reversible—hence, the reason for the Court of Appeals basing its opinion upon an entirely different theory.

VI.

ARGUMENT

A. May a Circuit Court of Appeals, Unable to Sustain the Judgment of the District Court on the Grounds Assigned by the District Court, Affirm Upon Other Grounds Not Even Raised in the Lower Court?

In this case, there is no issue as to any matter of fact. The respondents' motion to dismiss (Tr. 11) asserted "that the complaint of the plaintiff fails to state a claim upon which relief can be granted, and . . . the Plaintiff's complaint shows that his claim is barred by Section 732 of the Mississippi Code of 1942, Annotated . . .", that is, barred by the statute of limitations.

Statute of limitations is an affirmative defense *(Rule 8(c) of the Federal Rules of Civil Procedure*—APPENDIX "A") to be asserted in a pleading *(Rule 7(a) of the Federal Rules of Civil Procedure*—APPENDIX "B"); for there is no provision under the Rules which would permit it to be asserted in a Motion To Dismiss *(Rule 12(b) of the Federal Rules of Civil Procedure*—APPENDIX "C"). Therefore peti-

tioner, plaintiff below, properly treated respondents' (defendants') Motion To Dismiss as an *"answer", Baker v. Sisk,* 1 F.R.D. 232. And since all of the averments in the complaint, except the averment that petitioner's claim was saved from the bar of the statute of limitations, were not denied in the respondents' Answer, and a responsive pleading was required; all of the allegations of the complaint with respect to the slanders must be taken as admitted *(Rule 8(d) of the Federal Rules of Civil Procedure*—APPENDIX "A". *Gibbs v. Buck,* 307 U. S. 56; 59 S. Ct. 725; 83 L. Ed. 1111. And now, since there was no issue remaining as to any material fact; *unless the claim was barred by the statute of limitations, the petitioner was entitled to summary judgment as a matter of law upon the making* of a Motion therefor *(Rule 56(a) (c) of the Federal Rules of Civil Procedure*—APPENDIX "E"). Motion for Summary Judgment was duly filed by petitioner (Tr. 23, 30), supported by affidavit.

It is obvious that the Circuit Court of Appeals felt that the District Court had erred in holding that the petitioner's claim was barred by the one year statute of limitations and that bar *was* saved by virtue of Section 744 of the *Mississippi Code of 1942, Annotated.*

Under Mississippi law, a dismissal for want of jurisdiction (being in the wrong forum), as where the amount of a Cross-Claim or Counter-Claim far exceeds a County Court's $3,000.00 jurisdictional sum, (Appendix III) is a dismissal for matter of form within

the purview of Section 744 of the Mississippi Code, 1942, Annotated, and as such may be brought in a proper Federal forum having jurisdiction at any time within one year from date of such abatement. *Section 744, Mississippi Code, 1942, Annotated. Frederick Smith Enterprise Co. v. Lucas,* 204 Miss. 43; 36 So. 2nd 812. *Hawkins v. Scottish Union and Natl. Ins. Co.,* 110 Miss. 23; 69 So. 710.

Further, State laws and decisions regarding extensions of time to bring a new action, after failure of action other than upon their merits, should be followed by federal district courts, *Merko v. Sturm & Dillard Co.,* 233 Fed. 68; certiorari denied 242 U. S. 630; 61 L. Ed. 536; 37 S. Ct. 14. *Harrison v. Remington Paper Co.,* 140 Fed. 385; certiorari denied 199 U. S. 607; 50 L. Ed. 331; 26 S. Ct. 747.

But the Court of Appeals neither sustained the judgment of the District Court by holding the claim barred by the Statute of Limitations; nor did it grant the petitioner summary judgment, to which the petitioner would undoubtedly be entitled in the event his claim had been saved by *Section 744* of the Mississippi Code, 1942, Annotated, since that was the *only* issue raised below.

Instead, the Court of Appeals, interjecting a completely new defense for respondents, and one which had never been raised before, *held,* in effect, that while all of the facts as alleged by the petitioner were true; the respondents' false and malicious slanders were

absolutely privileged, since they were made during the course of a legal proceedings. (Tr. 56).

Petitioner would show that since the defense of "absolute privilege" was not made below; and is not to be found in the *Record* or in any pleading filed below by respondents, the Circuit Court of Appeals had no occasion whatever to even *consider* it. *Morrill v. Jones,* 106 U. S. 466; 1 S. Ct. 423; 27 L. Ed. 267. *Roberts vs. Metropolitan Life Ins. Co.,* 95 F. 2nd 277. Certiorari denied 303 U. S. 660; 82 L. Ed. 1119; 58 S. Ct. 764; 304 U. S. 570; 82 L. Ed. 1530; 58 S. Ct. 1039.

B. May the Defense of Absolute Privilege Be Raised in the Court of Appeals for the First Time; Especially Where Its Effect Is to Adjudicate a Question of Fact? Petitioner Maintains That Had the Complaint's Allegation of Malice Been Denied by Respondents; Petitioner Would Have Been Entitled to Have That Fact Passed On by Jury—Demand for Jury Trial Having Been Made.

Even if the Court of Appeals did have power to interpose a completely new defense; the defense of "absolute privilege" falls far short of enabling respondents to avoid the consequences of their deeds *in this case.*

In the case of *White v. Nicholls,* 3 How. 266; 11 L. Ed. 591, a review of the principles of "libel and slander" and "privileged occasions" was made by this

Court. At page 291 of 3 How. the following was stated:

> ". . . the following conclusions . . . we propound as the law: . . . no presumption can be permitted to operate, much less be made to sanctify the indulgence of malice, however wicked, however express, under the protection of legal forms. We conclude then that malice may be proved, though alleged to have existed in the proceedings before a court, or legislative body, or any other tribunal or authority, although such court, legislative body, or other tribunal, may have been the appropriate authority for redressing the grievance represented to it; and that proof of express malice in any written publication, petition, or proceeding, addressed to such tribunal, will render that publication, petition or proceeding libelous in its character, and actionable, and will subject the author and publisher thereof to all the consequences of libel. And we think that in every case . . . *falsehood, and the absence of probable cause will amount to proof of malice.*" (Italics added.)

1. There Was Falsehood:

The testimony is clear that on or about January 14th, 1952, one of the respondents, acting within the scope of his authority, and on behalf of the other respondents (Tr. 2-3) arose at the sounding of the Court Docket in the County Court of Adams County, Mississippi, and giving as an excuse for wishing the case passed to the next Term, said to that Court that he wished the case passed as the Defendent, Jack C.

Vaughan, had "taken bankruptcy" (Tr. 2-3, 24) thereby "falsely and maliciously imputing a desire on plaintiff Vaughan's part to 'get out of', or otherwise avoid paying his legal and moral obligations". (Tr. 3.) The slander was absolutely false because, ". . . at no time in his life has Plaintiff Vaughan ever 'taken bankruptcy' or sought to take bankruptcy" (Tr. 4).

2. There Was An Absence of Probable Cause:

It is, of course, within the power of courts of bankruptcy of the federal judiciary to stay state court proceedings *(U.S.C.A. Title 11, Chap. 3, Sec. 29.)*. But procedure requires a motion, order, or formal notice of some kind before any state court is required to defer. "It is is no sense the duty of the (state) court to grant a stay merely because it hears of the bankruptcy of a suitor". *The Collier Bankruptcy Manual, 1948,* at page 162. Certainly it is not within the province of courts to concern themselves with rumor; nor lawyers be rumormongers. Therefore, unless the respondents were in a position to tender proof of petitioner's having "taken bankruptcy", they were completely without probable cause in making such an assertion. And to clinch the matter, there is the letter from respondents to petitioner of February 27, 1953, *admitting* there were no grounds for probable cause *by denying that the statement had ever been made* (R. 29-30).

The judgment of the District Court should have been reversed by the Court of Appeals, and summary

judgment entered for Petitioner against the Respondents. Petitioner was entitled to the protection of his claim by the provisions of *Section 744, Mississippi Code, 1942, Annotated.* A *State* may not deny a citizen of the United States of America equal protection under its laws—*Fourteenth Amendment to the Federal Constitution—nor may a federal District Court sitting in Mississippi; or a federal Court of Appeals. (Ninth Amendment To The Federal Constitution).* And their failure to grant Petitioner his remedy against the wrongs of Respondents, and to which remedy Petitioner was entitled by virtue of the Statutes laid down by Congress—the *Federal Rules of Civil Procedure*—calls forth the exercise of this Court's power of supervision to avert this gross miscarriage of justice.

Due process of law guarantees an orderly procedure in Court for the ascertainment of damages for an injury to the end that the person injured shall have a proper and adequate remedy. The right to damages for an injury is included within the Constitutional guaranty. *12 Am. Jur.—Constitutional Law, Sec. 622.* Had the Petitioner's Complaint's allegation of malice (R. 3) been denied by Respondents; the Petitioner would have been entitled to have that fact passed on by a jury *(White v. Nicholls, supra);* demand for jury trial having been made (R. 5—*Rule 38, Federal Rules of Civil Procedure*—APPENDIX "D"); *Bass v. Hoagland,* 172 F. 2nd 205. The Opinion of the Court of Appeals was, in effect, *a finding of fact* that there was no malice involved in the slanders; hence, the provisions of *White v. Nicholls* were nullified.

VII.

CONCLUSION

For the foregoing reasons, Petitioner, Jack C. Vaughan, respectfully prays the Court to grant this petition for a writ of certiorari to be directed to the United States Court of Appeals for the Fifth Circuit, and that after a hearing on the merits this Court will enter judgment here for the relief prayed for in the original Complaint filed by the Plaintiff, Petitioner here, in the District Court below on the 12th June, 1953 (Tr. 1, 5). And for such other relief as is by this Court deemed appropriate.

Respectfully submitted,

Jack C. Vaughan, Petitioner,
in propria persona

MAILING ADDRESS:
Post Office Box 1005,
Gardena, California

AFFIDAVIT OF SERVICE

STATE OF CALIFORNIA,
County of Los Angeles.—ss.

Before me the undersigned authority in and for the State and County aforesaid, came and appeared Jack C. Vaughan, who having first been duly sworn did state on oath that he is the Petitioner in the above cause and that he did serve a true copy of the above and foregoing PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Fifth Circuit, upon GERARD H. BRANDON, the attorney of record of the Respondents, BRANDON, BRANDON, HORNSBY & HANDY and THE TEXAS COMPANY, by mailing same, via Air Mail, First Class, Postage Prepaid, in an envelope duly addressed to him at his last stated address, which is the address last known to Affiant, to-wit:—Post Office Box 265, Natchez, Mississippi, and deposited in the United States Mails at the Post Office at GARDENA, CALIFORNIA. This the 31 day of July, A.D. 1954. It is verily believed by Affiant that this is in compliance with the provisions of Paragraphs 1 and 3(c) of Rule 33 of the RULES of this Court.

s/ JACK C. VAUGHAN
Petitioner.

SWORN TO AND SUBSCRIBED before me this 31 day of July, 1954.

s/ R. J. ALBRIGHT
R. J. Albright, *Notary Public.*

My Commission Expires:
November 26, 1956
(SEAL)

APPENDIX

APPENDIX "I"

§732. *Other actions commenced in one year.*—All actions for assault and battery, maiming, false imprisonment, malicious arrest, or menace, and all actions for slanderous words concerning the person or title, and for libels, shall be commenced within one year next after the cause of such action accrued, and not after.

MISSISSIPPI CODE 1942, ANNOTATED, Vol. 1, p. 800.

APPENDIX "II"

§744. *New action after abatement, reversal.*—If in any action, duly commenced within the time allowed, the writ shall be abated, or the action otherwise avoided or defeated, by the death of any party thereto, or for any matter of form, or if, after verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on appeal, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after reversal of the judgment therein; and his executor or administrator may, in case of his death, commence such new action, within the said one year.

MISSISSIPPI CODE 1942, ANNOTATED, Vol. 1, p. 811.

APPENDIX "III"

§1604. *County Court—jurisdiction.*—. . . The jurisdiction of said court shall be as follows: viz, It shall have jurisdiction concurrent with the courts of justices of the peace in all matters, civil and criminal, of which justices of the peace have jurisdiction; and it shall have jurisdiction concurrent with the circuit and chancery courts in all matters of law and equity wherein the amount of value of the thing in controversy shall not exceed, exclusive of costs and interest, the sum of three thousand dollars ($3,000.00). It shall have exclusively the jurisdiction heretofore exercised by justices of the peace in the following matters and causes; viz., eminent domain, the partition of personal property, and actions of unlawful entry and detainer. Provided, that action of eminent domain and unlawful entry and detainer may be returnable and triable before the judge of the said court in vacation.

MISSISSIPPI CODE 1942, ANNOTATED,
1950 Cumulative Supplement, Vol. 2, p. 113.

. . . . .

APPENDIX "A"

RULE 8. GENERAL RULES OF PLEADING

(c) *Affirmative Defenses.* In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, statute of frauds, STATUTE OF LIMITATIONS (emphasis), waiver, and any other matter constituting an avoidance or affirmative defense . . .

(d) *Effect Of Failure To Deny.* Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading . . .

U.S.C.A. Title 28, Federal Rules of Civil Procedure, Rules 1 to 16, page 253.

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APPENDIX "B"

RULE 7. PLEADINGS ALLOWED. . . .

(a) *Pleadings.* There shall be a complaint and an answer; and there shall be a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third party complaint, if leave is given under Rule 14 to summon a person who was not an original party; and there shall be a third-party answer, if a third-party complaint is served. No other pleadings shall be allowed, except that the court may order a reply to an answer or a third party answer. . . .

U.S.C.A. Title 28, Federal Rules of Civil Procedure, Rules 1 to 16, page 245.

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APPENDIX "C"

RULE 12. DEFENSES AND OBJECTIONS — WHEN AND HOW PRESENTED— BY PLEADING OR MOTION—MOTION FOR JUDGMENT ON PLEADINGS.

(b) *How Presented.* Every defense, in law or fact, to a claim for relief in any pleading . . . ***shall be asserted in the responsive pleading thereto*** (emphasis) . . . except that the *following* (emphasis) defenses may be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensible party. . . .

U.S.C.A. Title 28, Federal Rules of Civil Procedure, Rules 1 to 16, page 335.

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APPENDIX "D"

RULE 38. JURY TRIAL OF RIGHT.

(a) *Right preserved.* The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

(b) *Demand.* Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party. . . .

U.S.C.A. Title 28, Federal Rules of Civil Procedure, Rules 17 to 51, page 352.

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APPENDIX "E"

RULE 56. SUMMARY JUDGMENT.

(a) *For Claimant.* (c) *Motion and Proceedings There.* (e) *Form of Affidavits; Further Testimony.* (a) A party seeking to recover upon a claim . . . may at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof . . . The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law . . . Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits.

U.S.C.A. Title 28 Federal Rules of Civil Procedure, Rules 52 to End, pages 153-154.